

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES

CUMBERLAND MANOR  
NURSING & REHABILITATION CENTER

and

Case 04-CA-133709

UNITED AUTO WORKERS LOCAL 2327

*Margaret M. McGovern, Esq.*, for the General Counsel.

*Peter R. Perla, Jr., Esq., Jasinski Law Firm, Newark, New Jersey.*

for the Respondent.

*Ryan Sweeney, Esq. (Cleary, Josem & Trigiani)* Philadelphia, Pennsylvania,  
for the Charging Party.

DECISION

STATEMENT OF THE CASE

Arthur J. Amchan, Administrative Law Judge. This case was tried in Philadelphia, Pennsylvania on February 4, 2015. United Auto Workers Local 2327 (the Union) filed the initial charge in this matter on July 30, 2014. The General Counsel issued the complaint on October 16, 2014.

The General Counsel alleges that Respondent has violated Section 8(a)(5) and (1) of the Act by failing and refusing to provide the Union some of the information it requested on April 4, 2014, unduly delaying providing other information requested the same date and failing and refusing to meet with the Union for purposes of bargaining a new collective bargaining agreement since July 29, 2014.

On the entire record, including my observation of the demeanor of the witnesses, and after considering a brief filed by the General Counsel and a letter from the Respondent in lieu of a brief, I make the following

## FINDINGS OF FACT

## I. JURISDICTION

Respondent, Cumberland Manor Nursing and Rehabilitation Center operates a facility in Bridgeton, New Jersey. At this facility it annually receives gross revenues in excess of \$100,000 and purchases and receives goods valued in excess of \$5,000 directly from points outside of New Jersey. Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

## II. ALLEGED UNFAIR LABOR PRACTICES

The Union represents all full-time and regular part time Licensed Practical Nurses, Activity Aides, Nurses Aides, Nursing Orderlies, Laundry Employees, Housekeeping Employees, Dietary Employees, Office, Clerical and Maintenance employees and Maintenance LPL at Respondent's Bridgeton, New Jersey facility. Respondent and the Union had a collective bargaining agreement that ran from July 11, 2012 through July 31, 2014.

On April 4, 2014, the Union sent Respondent a letter notifying Respondent of its intent to open negotiations for a successor contract to the 2012-2014 collective bargaining agreement. The same day the Union also sent Respondent letter requesting information for use in collective bargaining. The requests involved information regarding the "employee population" at Respondent's facility, Respondent's health insurance program, pension plan, life insurance program and safety.

On May 30, David Jasinski, Esq., on behalf of Respondent, requested the Union to provide him with dates for contract negotiations. The Union responded on June 2, proposing three dates in late June and providing a copy of its April 4 information request. It received no response.

On July 29, the Union emailed Jasinski proposing dates in late July and early August. Jasinski and Respondent did not respond to this request. As a result, the Union filed the instant unfair labor practice charge. Jasinski wrote union president Sandy Urban on November 25, 2014 proposing 4 dates in mid-December for contract negotiations. The Union responded the next day stating it was available on December 15 and 17, assuming that Respondent provided it the information that the Union requested on April 4.

Respondent did not provide any of the information requested on April 4, until January 6, 2015. Additional information was provided on January 26. As of February 4, 2015, there had been no collective bargaining negotiating sessions between Respondent and the Union.

As of the February 4 hearing in this matter, Respondent had not provided the Union the following information that was requested 10 months earlier:

The name of the company providing health benefits to unit members

A plan summary for health benefits  
 An Annual report regarding health benefits  
 The premiums for health benefits

5        The name of the company providing life insurance to unit members  
           The premium cost per thousand for life insurance  
           The number of employees insured  
           The total premium cost

10       In January 2015, Respondent provided the following information requested by the Union  
 on April 4:

          Employee names  
           Employees' dates of hire  
 15       Employees' job classifications  
           Employees' rate of pay  
  
           A copy of Respondent's safety rules  
           A list of safety training  
 20       A copy of Respondent's work rules

          Respondent provided the Union with a 2011 plan summary for its health benefits  
 program. The Union is not satisfied that this is the most recent plan summary.

25       On February 12, 2015, after the hearing in this matter closed, Respondent provided the  
 Union with a proposal and cost summary for group life insurance.

          Respondent did not provide the Union with any of the information requested about  
 pension plans because it has no such plan.

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### *Analysis*

          Section 8(a)(5) provides that it is an unfair labor practice for an employer to refuse to  
 bargain with the representative of its employees. An employer's duty to bargain includes a  
 35       general duty to provide information needed by the bargaining representative for contract  
 negotiations or administration, *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149, 152-53 (1956).  
 Information pertaining to employees in the bargaining unit is presumptively relevant, *Southern  
 California Gas Co.*, 344 NLRB 231, 235 (2005). The information requested by the Union in this  
 case pertains to bargaining unit employees. Respondent has made no effort, and thus has failed  
 40       to overcome this presumption.

          An employer must respond to an information request in a timely manner. An  
 unreasonable delay in furnishing such information is as much of a violation of Section 8(a)(5) of  
 the Act as a refusal to furnish the information at all, *American Signature Inc.*, 334 NLRB 880,  
 45       885 (2001).<sup>1</sup>

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<sup>1</sup> This case has also been cited under the name of *Amersig Graphics, Inc.*

If an employer has a claim that some of the information requested is confidential or unduly burdensome to produce, such claims must be made in a timely fashion, *Detroit Newspaper Agency*, 317 NLRB 1071, 1072 (1995). The reason a confidentiality claim must be timely raised is so that the parties can attempt to seek an accommodation of the employer's confidentiality concerns, *Tritac Corp.*, 286 NLRB 522 (1987). The same is true with respect to a claim that satisfying the request would be unduly burdensome, *Honda of Hollywood*, 314 NLRB 443, 450-51 (1994); *Pet Dairy*, 345 NLRB 1222, 1223 (2005).<sup>2</sup>

If an employer declines to supply relevant information on the grounds that it would be unduly burdensome to do so, the employer must not only timely raise this objection with the union, but also must substantiate its defense. Respondent has done neither. It never sought clarification from the union in order to narrow the request, *Pulaski Construction Co.*, 345 NLRB 931, 937 (2005). Respondent has not advanced a sufficient excuse for either its delay in providing the requested information or failing to provide the information withheld. I find that it violated the Act in both respects.

Pursuant to Section 8(d) of the Act an employer is obligated to meet at reasonable times and confer in good faith with the bargaining representative of its employees with respect to wages, hours and other terms and conditions of employment. A refusal or failure to do so by an employer violates Section 8(a)(5) and (1) of the Act. It is clear from this record that Respondent has ignored its statutory obligations since July 29, 2014. Although, it has not established any excuse, it intimates that the reason it has not been able to meet is the busy schedule of its principal negotiator, attorney David Jasinski.

Even if I were to assume that Mr. Jasinski was too busy to respond to the Union's requests for information and bargaining sessions, Respondent violated the Act. The obligation to bargain is the employer's. It is no excuse that the employer delegated this obligation to a very busy attorney. "If a given negotiator becomes indisposed or is otherwise unable to discharge this responsibility because of other commitments, it is the duty of the party involved to designate a negotiator who can fully discharge this obligation," *Exchange Parts Company*, 139 NLRB 710, 714 (1962), *enfd.* 339 F.2d 829, 832 (5<sup>th</sup> Cir. 1965).<sup>3</sup>

### *Conclusion of Law*

For the reasons stated above, I find that Respondent has not established any legitimate defense for failing to meet and bargain with the Union or in providing relevant information to the Union, or providing the requested information in a timely manner. Therefore, it has violated Section 8(a)(5) and (1) in refusing to provide these documents to the Union in a timely manner and in failing to meet with the Union at reasonable times to confer in good faith with respect to wages, hours, and other terms and conditions of employment as required by Section 8(d) of the Act.

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<sup>2</sup> Also cited as *Land-O-Sun Dairies*.

<sup>3</sup> Accord, *Calex Corp.*, 322 NLRB 977, 978 (1997); *O & F Machine Products Co.*, 239 NLRB 1013, 1018-1019 (1978); *Barclay's Caterers*, 308 NLRB 1025, 1035-1037 (1992); *Caribe Staple Co.*, 313 NLRB 877, 893 (1994).

## REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

Given Respondent's total disregard of its obligations under Section 8(d) of the Act, I shall order it, unless the Union agrees otherwise, to meet and confer with the Union for a minimum of 24 hours of bargaining per month, with minimum negotiating sessions of six hours each. The Respondent shall also submit written monthly progress reports regarding the negotiations to the Regional Director and the Union no later than the last day of each month, *All Seasons Climate Control, Inc.*, 357 NLRB No. 70 (2011) fn. 2.

Respondent's March 11, 2015, letter in lieu of brief also demonstrates the need for such an extraordinary remedy. The letter states that Respondent's principal negotiator, David Jasinski, is currently negotiating new collective bargaining agreements for more than a dozen facilities and has been in trial since February 9, 2015. If Respondent cannot fulfill its statutory obligations through Mr. Jasinski, it must do so through another negotiator.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>4</sup>

## ORDER

The Respondent, Cumberland Manor Nursing and Rehabilitation Center, Bridgeton, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with United Auto Workers Local 2327 by failing and refusing to promptly furnish the information requested by the Union on April 4, 2014, and in failing to furnish all the information requested.

(b) Refusing and failing to meet with the Union at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment as required by Section 8(d) of the Act.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

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<sup>4</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(a) Within 30 days of this decision, furnish the Union all the information that it requested on April 4, 2014 that has not been provided previously.

(b) With 15 days of the Union's request, bargain with the Union at reasonable times in good faith until full agreement or a bona fide impasse is reached, and if an understanding is reached incorporate such understanding in a written agreement. Unless the Union agrees otherwise, such bargaining sessions shall be held for a minimum of 24 hours of bargaining per month, with minimum negotiating sessions of six hours each. The Respondent shall also submit written monthly progress reports regarding the negotiations to the Regional Director and the Union no later than the last day of each month.

(c) Within 14 days after service by the Region, post at its Bridgeton, New Jersey facility copies of the attached notice marked "Appendix."<sup>5</sup> Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 4, 2014.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C., March 13, 2015

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Arthur J. Amchan  
Administrative Law Judge

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<sup>5</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

## **APPENDIX**

### **NOTICE TO EMPLOYEES**

Posted by Order of the  
National Labor Relations Board  
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

#### **FEDERAL LAW GIVES YOU THE RIGHT TO**

Form, join, or assist a union  
Choose representatives to bargain with us on your behalf  
Act together with other employees for your benefit and protection  
Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain with the Union, United Auto Workers Local 2327, by failing and refusing to promptly furnish information necessary and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of our bargaining unit employees.

WE WILL NOT refuse or fail to meet with the Union at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment as required by Section 8(d) of the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL within 30 days furnish the Union with any of the information it requested on April 4, 2014, that has not been previously provided.

WE WILL within 15 days of the Union's request, meet with it at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment as required by Section 8(d) of the Act. WE WILL bargain until full agreement or a bona fide impasse is reached, and if an understanding is reached, incorporate such understanding in a written agreement. Unless the Union agrees otherwise, such bargaining sessions shall be held for a minimum of 24 hours of bargaining per month, with minimum negotiating sessions of six hours each. WE WILL also submit written monthly progress reports regarding the negotiations to the Regional Director and the Union no later than last day of each month.

CUMBERLAND MANOR  
NURSING & REHABILITATION CENTER

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(Employer)

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: [www.nlr.gov](http://www.nlr.gov).

615 Chestnut Street, 7th Floor, Philadelphia, PA 19106-4404  
(215) 597-7601, Hours: 8:30 a.m. to 5 p.m.



The Administrative Law Judge's decision can be found at [www.nlr.gov/case/04-CA-133709](http://www.nlr.gov/case/04-CA-133709) or by using the QR Code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14<sup>th</sup> Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.

**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE**

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (215) 597-5354.